

CRIMINAL LAW AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to address community concerns about the availability of information about the whereabouts of convicted child sex offenders and to take the decision making process about releasing such information out of the political arena.

Reasons for the objectives and how they will be achieved

The Bill will remove the Attorney-General as the person who can disclose information under s 20 of the *Criminal Law Amendment Act 1945* about offences of a sexual nature committed by a person ordered to report his or her address under section 19 of that Act. Instead, the Queensland Community Corrections Board (QCCB) will have the discretion. The QCCB will also have the power to disclose other relevant information such as the address of the offender, any change of name and the modus operandi of the offender. Also, when considering an application the QCCB will be able to identify other persons, with a legitimate and sufficient interest, to whom the information should be released.

Administrative cost to Government of implementation

There will be minimal administrative cost to government. The Department of Corrective Services estimates the costs associated with the development and operation of a registry for the disclosure of information pursuant to section 20 of the *Criminal Law Amendment Act 1945* to be in the order of c. \$144 756 p.a.

It is expected that the QCCB will be required to schedule specific meetings to consider applications made for the release of information. Members of the Board are paid per meeting.

Fundamental legislative principles

The release of information could be viewed as a restriction on the liberty of a convicted child sex offender. The amendments, together with Ministerial Guidelines, and the capacity to impose conditions on the release, the offence provision for failing to abide the conditions, and the requirement to prove a legitimate and sufficient interest, when taken together, provide an appropriate balance to safeguard the interests of the convicted child sex offender and the interest of citizens in obtaining the information.

Consultation

Consultation took place between the Honourable the Attorney-General and Minister for Justice and Minister for the Arts and the Honourable the Minister for Police and Minister for Corrective Services and their respective departments. The views of the Director of Public Prosecutions, Bar Association of Queensland, Queensland Law Society, Council for Civil Liberties, Commissioner of Police, and the Minister for Families Youth and Community Care were also sought. The Bar Association of Queensland and Council for Civil Liberties did not respond.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the Act's short title as being the *Criminal Law Amendment Act 1999*.

Clause 2 states that the Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF THE CRIMINAL LAW AMENDMENT ACT 1945

Clause 3 states that this part amends the *Criminal Law Amendment Act 1945*.

Clause 4 amends section 19 of the Act by adding a power for the court to order the offender to report his or her name change. Also, subsection (5) is repealed so that if a rehabilitation period is capable of running under the *Criminal Law (Rehabilitation of Offenders) Act 1986* in relation to a conviction for which a reporting order is made under section 19(1) then the expiration of that period will no longer over-ride the reporting order.

Clause 5 amends section 20 of the Act by replacing the Attorney-General with the QCCB as the body which can release information under that section. The Board will be able to do so on application only. The applicant can be either a police officer or a corrective services officer or a person claiming to have a legitimate and sufficient interest in having the information. As well as information about any offence of a sexual nature of which the person subject to a reporting order under section 19 has been convicted (as the law currently stands) the section will allow the Board to release other relevant information. The Board will be able to release the information to either a person nominated in the application if the person has a legitimate and sufficient interest in having it, or to any other person who the board, on considering the application, considers has a legitimate and sufficient interest in having the information.

Also, to remove any doubt about the interpretation of the section, it will state that when a convicted child sex offender is ordered to report, all sex offences committed by that person become relevant for the purpose of deciding what information, if any, should be released, that is—

- Whether or not the conviction was a conviction for which the reporting order under section 19 was made;
- Whether the conviction was recorded before or after the order;
- Whether the offence for which the conviction was recorded was committed before or after the order.

Clause 6 inserts a new section 22 to declare that the expiration of a rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* in relation to a conviction mentioned in section 19(1) has no effect on the power to make an order, the effect of an order, the obligation of an offender to comply with an order or the provision of information under section 20. Also, the clause will ensure that a rehabilitation period will not prevent the release of information under section 20 about offences other than the offence that triggers a section 19(1) reporting order to be made. It is intended that the QCCB should be able to release information about other sex offences irrespective of whether a rehabilitation period has expired for that offence. Otherwise, the QCCB would be restricted to releasing information about only those other sex offences for which a rehabilitation period has not expired.

Clause 7 inserts a new part 5 in the Act for transitional provisions and inserts a new section 23 (Transitional provision for the Criminal Law Amendment Act 1999). The new section will state that for section 20(1)(b), that is for the purpose of deciding what details of an offence of a sexual nature of which the person has been convicted should be released, the following is immaterial—

- Whether the order under section 19(1) to which the offender is subject was made before or after the commencement of clause 5 above. (It is intended that section 20 should apply to orders made under section 19(1) before or after the commencement of the amending Act; ie to existing and future orders. Otherwise, the QCCB would be restricted to releasing information only with respect to persons against whom orders under section 19(1) are made after the commencement of the amending Act.);
- Whether the conviction was recorded before or after the commencement of clause 5 above;
- Whether the offence for which the conviction was recorded was committed before or after the commencement of clause 5 above;

Similarly, for the new section 22 in relation to the ineffect of rehabilitation periods on reporting orders, it will be immaterial whether the reporting order was made, or the conviction for which the order was made, or the offence for which the conviction was recorded, was committed before or after the commencement of the Act.

PART 3—AMENDMENT OF THE CORRECTIVE SERVICES ACT 1988

Clause 8 states that this part amends the *Corrective Services Act 1988*.

Clause 9 amends section 139 of the Act to extend the power of the Minister to issue guidelines for the exercise of functions conferred on the Board by another Act.

PART 4— MINOR AND CONSEQUENTIAL AMENDEMENTS

Clause 10 provides that the schedule amends the Acts mentioned in it.

SCHEDULE

The schedule makes minor and consequential amendments to a number of Acts.

CORRECTIVE SERVICES ACT 1988

Items 1 to 3 renumber references to Part 4 of the *Criminal Law Amendment Act 1945* as references to Part 3.

CRIMINAL LAW AMENDMENT ACT 1945

Item 1 renumbers part 4 as part 2 since parts 2 and 3 (which had amended the *Criminal Code* and *Justices Act 1886*) were omitted under the *Reprints Act 1992*.

Item 2 omits the words ‘Indeterminate Detention and’ from the heading of part 2, as renumbered, so that the part (ie section 17) deals only with ‘Probation orders in cases of convictions for sexual offences’.

Item 3 inserts before section 18 a new part 3 and heading ‘Indeterminate Detention of Offenders Convicted of Sexual Offences’.

Item 4 removes a redundant reference to psychiatric clinics.

Item 5 inserts before section 19 a new part 4 and heading ‘Sexual Offenders to Report’.

Item 6 omits the reference in section 21(1) to section 20(3) and inserts a reference to section 20(6) as renumbered by the amending Act.

PUBLIC TRUSTEE ACT 1978

Item 1 renumbers a reference to Part 4 of the *Criminal Law Amendment Act 1945* as a reference to Part 3.